SUBRAMANIAM MUNIANDY & ANOR.

v.

CHEW KOK LEONG

HIGH COURT MALAYA, KUALA LUMPUR
LC VOHRAH J
[CIVIL SUIT NO. F 235 OF 1985]
10 OCTOBER 1985

CIVIL PROCEDURE: *Striking out of statement of claim - Order 18 r. 19 Rules of the High Court 1980 - Inherent jurisdiction of the Court - Abuse of the process of the Court - Specific performance - Order 81 of Rules of the High Court - Triable issues.*

The defendant as vendor had refused to execute the necessary documents for the transfer of her land until she received the money for the sale of the land. The issue before the Court involved the interpretation of Clauses 3, 6 and 9 of the sale agreement. The plaintiffs also lodged a caveat on the property. The defendant was applying for the plaintiff's statement of claim to be struck out and for the whole action to be dismissed under O. 18 r. 19 of the Rules of the High Court 1980 and for the removal of the caveat. The plaintiffs also applied under O. 81 of the Rules of the High Court 1980 for specific performance.

Held:

[1] On the interpretation of the relevant clause of the sale and purchase agreement, namely Clause 6, if the plaintiffs refuse to settle the balance sum within 4 months from the date of the agreement then the deposit would be forfeited without any damages having to be paid to the plaintiffs.

[2] Here, there is every intention on the part of the plaintiffs to settle the balance sum well before the deadline.

[3] The statement of claim does disclose some ground for the action and there has not been an abuse of the process of the Court.

[4] In the circumstances, the caveat was not lodged contrary to the provisions of the National Land Code and having regard to the balance of convenience it ought to stand.

[5] There are triable issues in this case, especially the interpretation of Clause 3.

[Defendant's application dismissed with costs. Plaintiffs' application for specific performance dismissed with costs.]

Case referred to:
Tan Suan Sim v. Chang Fook Shen [1980] 2 MLJ 66

Legislation referred to:
Rules of the High Court 1980, O. 18 r. 19, O. 81

For the plaintiffs - M. Rajasekaran; M/s. Rekhraj Zaitoon & Associates
For the defendant - Yusuf Khan; M/s. Yusuf Lee Pathma & Marbeck.

JUDGMENT

LC Vohrah J:

This is an application on the part of the defendant for the statement of claim to be struck out and the whole action dismissed under O. 18 r. 19 of the Rules of the High Court 1980 and under the inherent jurisdiction of the Court and for the caveat lodged by the plaintiffs in respect of the defendant's land to be removed.

The dispute arises from the refusal of the defendant as vendor to execute the necessary documents for the transfer of her land without first receiving the money for the sale of the land and involves the interpretation of Clauses 3, 6 and 9 of the sale agreement prepared by a petition-writer.

I do not accept the contention of Counsel for the defendant that the language of Clause 6 is so clear that the balance sum of RM40,000 must be **paid** on or before 28 February 1985 whereupon the obligation of the defendant would arise to execute the transfer. What Clause 6 in my view states is that if the plaintiffs refuse to **settle** the balance sum of RM40,000 within 4 months from the date of the agreement then the deposit would be forfeited without any damages having to be paid to the plaintiffs. I would say that the observations of Chang Min Tat FJ in *Tan Suan Sim v. Chang Fook Shen* [1980] 2 MLJ 66 (right column, last paragraph) apply most cogently in this case as there was every intention on the part of the plaintiffs to settle the balance sum well before the deadline as evidenced by the letters, CKL-3A and CKL-3B exhibited to Encl. 4. In my view the statement of claim does disclose some ground for the action and para. 3 of the statement of claim does not misrepresent the facts or mislead the Court so as to amount to an abuse of the process of the Court. In the circumstances I do not think the caveat was lodged contrary to the provisions of the National Land Code and having regard to the balance of convenience it ought to stand.

The application is accordingly dismissed with costs.

As regards the plaintiffs' application under O. 81 of the Rules of the High Court 1980 for specific performance, I am of the view that there are triable issues in this case especially having regard to the provisions of Clause 3 which would obviously make nonsense of the deposit. The plaintiffs' application is also dismissed with costs.

Also found at [1986] 1 CLJ 256